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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY, FEBRUARY 10, 2000
(VOLUME 22, PAGES 3068-3121)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

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APPEARANCES:

FOR THE PLAINTIFFS:
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ROBERT BROWN, ESQ.
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SAN FRANCISCO, CALIFORNIA 94111-5802
FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:
SHOOK, HARDY & BACON LLP
BY: DAVID K. HARDY, ESQ.
GERALD V. BARRON, ESQ.
LUCY E. MASON, ESQ.
ONE MARKET, STEUART TOWER, NINTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1310.

FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

WOMBLE, CARLYLE, SANDRIDGE & RICE
BY: JEFFREY L. FURR, ESQ.
200 WEST SECOND STREET
WINSTON-SALEM, NORTH CAROLINA 27101
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
BY: H. JOSEPH ESCHER III
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-4065
FOR DEFENDANT METALCLAD INSULATION CORPORATION:
MISCIAGNA & COLOMBATTO
BY: GREGORY S. ROSSE, ESQ.
27 MAIDEN LANE, 4TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108

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THURSDAY, FEBRUARY 10, 2000 9:20 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: PLEASE BE SEATED, COUNSEL.

LET ME JUST MENTION SOMETHING TO THE JURORS. I KNOW THAT WE HAVE HAD KIND OF LONG SEGMENTS AND WE HAVE HAD SOME KIND OF LONG DAYS. AND I JUST WANT TO TELL YOU ALL THAT IF AT ANY TIME THAT ANY OF YOU IS KIND OF FEELING DROWSY, YOU HAVE A FEELING THAT IT'S KIND OF A LONG SEGMENT,

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LONG ENOUGH THAT YOU'D LIKE TO TAKE A RECESS, FEEL FREE TO RAISE YOUR HANDS AND LET ME KNOW AND WE'LL TAKE A RECESS AT THAT POINT.

I HAVE NOTICED ON A COUPLE OF OCCASIONS THAT PEOPLE HAVE HAD THEIR EYES SHUT. I'M ASSUMING THAT EVEN THOUGH THEIR EYES ARE SHUT, THEIR MINDS ARE OPEN AND THEY ARE NOT DOZING OFF. BUT I JUST WANT TO BE SURE THAT YOU ARE COMFORTABLE. AND SO IF WE GET INTO A SEGMENT AND THE ROOM IS WARM OR THE SEGMENT IS LONG, YOU CAN FEEL FREE TO RAISE YOUR HAND AND ASK TO HAVE A RECESS, AND WE'LL TAKE IT AT THAT TIME.

OKAY. ARE WE GOING TO RESUME THE VIDEO?

MS. CHABER: I THINK WE'RE GOING TO COMPLETE IT.

THE COURT: OKAY. I THINK THE RECORD SHOULD SHOW THAT WE ARE GOING TO RESUME MR. BUMGARNER'S TESTIMONY BY VIDEO. AND SO WE ARE GOING TO GO OFF THE RECORD TO PLAY THE REMAINDER OF THE VIDEO.

MS. CHABER: I THINK IT WILL TAKE A MINUTE TO WARM UP.

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(VIDEOTAPE SHOWN)

THE COURT: WE ARE BACK ON THE RECORD. WE PLAYED THE VIDEO UP THROUGH PAGE 183, LINE 21. AND NOW I UNDERSTAND THERE'S TO BE SOME READING THAT MR. ESCHER IS GOING TO PRESENT.

MR. ESCHER: YES. THAT'S RIGHT, YOUR HONOR. THAT'S BECAUSE THIS PORTION WAS LEFT OUT OF THE VIDEOTAPE. WE'RE GOING TO START ON PAGE 183, LINE 22. I'D LIKE TO ASK MR. DAVID STOMP TO COME FORWARD AND READ THE ANSWERS, PLEASE.

THE COURT: OKAY. THAT'S FINE. ONCE AGAIN, WE ARE GOING TO GO OFF THE RECORD, BECAUSE THIS IS INCLUDED IN EXHIBIT 1921 FOR IDENTIFICATION.

MR. ESCHER: THANK YOU.

(DEPOSITION READ)

THE COURT: BACK ON THE RECORD. THE READING HAS BEEN COMPLETED, NOW WE ARE GOING TO RETURN TO THE VIDEO. SO WE'RE OFF THE RECORD AGAIN.

(VIDEOTAPE SHOWN)

THE COURT: WE ARE BACK ON THE RECORD. COULD YOU TURN THE LIGHTS ON, PLEASE. AND THE VIDEO HAS BEEN PLAYED.

BEFORE WE TAKE OUR MORNING RECESS, LET'S JUST HAVE THE VIDEO MARKED AS PLAINTIFFS' 1922 FOR IDENTIFICATION, PLEASE.

(ITEM MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS'

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EXHIBIT # 1922)

THE COURT: JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION DURING THE RECESS. LET'S TAKE A 20-MINUTE RECESS AND RETURN AT 10 MINUTES TO 11:00, PLEASE.

(RECESS TAKEN FROM 10:30 TO 10:52 A.M.)

THE COURT: WE ARE BACK ON THE RECORD.

MS. CHABER OR MR. BROWN, YOU MAY CALL YOUR NEXT WITNESS.

MS. CHABER: THANK YOU, YOUR HONOR.

AT THIS TIME, THE PLAINTIFF WOULD CALL TO THE STAND DR. JEFFREY RICHARDSON.

THE CLERK: PLEASE COME FORWARD. PLEASE STAND HERE AND RAISE YOUR RIGHT HAND.

TESTIMONY OF

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JEFFREY RANDA RICHARDSON, M.D.,
A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: JEFFREY RANDA RICHARDSON.
THE CLERK: PLEASE SPELL YOUR NAME.
THE WITNESS: J-E-F-F-R-E-Y R-A-N-D-A R-I-C-H-A-R-D-S-O-N.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

DIRECT EXAMINATION

BY MS. CHABER: Q. I THINK THERE'S WATER, IF YOU NEED ANY.
GOOD MORNING, DR. RICHARDSON. YOU ARE A MEDICAL

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DOCTOR?
A. THAT'S CORRECT.
Q. AND YOU ARE BOARD-CERTIFIED IN A MEDICAL SPECIALTY?
A. I'M BOARD-CERTIFIED IN OBSTETRICS AND GYNECOLOGY.
Q. AND WHERE HAVE YOU FROM PRACTICED AND FOR HOW LONG?
A. I'M IN PRACTICE IN VENTURA, CALIFORNIA. AND I'VE BEEN IN PRACTICE FOR ABOUT 20 AND A HALF YEARS.
Q. AND HAVE YOU BEEN LESLIE WHITELEY'S DOCTOR?
A. YES, I HAVE.
Q. DID YOU DELIVER ALL FOUR OF HER CHILDREN?
A. YES, I DID.
Q. AND SHE SOUGHT ALL OF HER TREATMENT AND CARE FOR HER PREGNANCIES WITH YOU?
A. YES, SHE DID.
Q. WHEN SHE CAME TO YOU, WAS THAT IN OCTOBER OF 1987, AT THE BEGINNING?
A. THAT'S CORRECT.
Q. DID SHE AND HER HUSBAND WANTED TO HAVE A FAMILY AT THAT TIME?
A. YES, THEY DID.
Q. DID THEY VERY MUCH WANT TO HAVE A FAMILY?
A. YES. SHE WAS VERY MOTIVATED TO TRY AND GET PREGNANT AND HAVE A FAMILY.
Q. DID YOU HAVE TO DEAL WITH SOME INFERTILITY ISSUES?
A. YES, I DID.

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Q. THEN SHE DID GET PREGNANT; CORRECT?
A. YES.
Q. AND IN MAY OF 1988 IS WHEN SHE FIRST LEARNED SHE WAS PREGNANT?
A. CORRECT.
Q. AND HOW DID SHE REACT?
A. SHE WAS VERY EXCITED.
Q. AND YOU'VE HAD AN OPPORTUNITY OVER THE YEARS IN DEALING WITH LESLIE.
IS SHE A CARING PERSON?
A. VERY MUCH SO.
Q. DID SHE CARE ABOUT HAVING HEALTHY CHILDREN?
A. ABSOLUTELY.
Q. DO YOU BELIEVE THAT SHE INTENTIONALLY WANTED TO HARM ANY OF HER CHILDREN?
A. ABSOLUTELY NOT.
Q. NOW, HER FIRST CHILD, TROY, WAS BORN IN JANUARY OF 1989.
AND YOU WERE INVOLVED IN THAT BIRTH?

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A. THAT'S CORRECT.
Q. DID YOU, BEFORE SHE GAVE BIRTH AND WHILE YOU WERE DOING WORK-UPS WITH HER, MAKE ANY DETERMINATIONS ABOUT LESLIE AS TO HER HEALTH STATUS?
A. I THOUGHT LESLIE WAS VERY HEALTHY.
Q. AND DID YOU MAKE ANY DETERMINATIONS AS TO WHETHER OR NOT SHE HAD ANY IMMUNE SYSTEM PROBLEMS?
A. THERE WERE NO IMMUNE SYSTEM PROBLEMS.
Q. NOW, DURING THE COURSE OF PREGNANCY, A WOMAN

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GAINS WEIGHT?
A. CORRECT.
Q. CAN THERE BE TOO MUCH OF A GAIN OF WEIGHT?
A. YES, THERE CERTAINLY CAN BE.
Q. AND DID LESLIE HAVE A TENDENCY TO GAIN A BIT TOO MUCH WEIGHT?
A. IDEALLY, I'D LIKE HAVE MY PATIENTS GAIN ABOUT 20 TO 25 POUNDS. AND LESLIE WOULD GAIN 30 TO 40 POUNDS.
BUT IT WASN'T -- I DON'T THINK IT CAUSED ANY MAJOR PROBLEMS.
Q. WHAT IS THE CONCERN ABOUT THE WEIGHT GAIN WITH RESPECT TO A WOMAN OR HER CHILD?
A. AS A GENERAL RULE, THERE'S A CORRELATION BETWEEN THE WEIGHT THE MOTHER GAINS AND HOW BIG THE BABY IS.
AND WE HATE TO SEE A GAL GAIN 50 OR 60 POUNDS AND THAN END UP WITH A BIG BABY AND HAVE A C-SECTION WHEN WE MIGHT HAVE BEEN ABLE TO PREVENT THAT.
Q. AND THE SMALLER THE BABY, WITHIN APPROPRIATE REASON, THE LESS LIKELIHOOD THAT IT WOULD HAVE TO BE A C-SECTION?
A. CORRECT.
Q. YOU'VE OBVIOUSLY HAD A PRACTICE -- I ASSUME MOST OF THE PEOPLE THAT YOU SEE ARE WOMEN?
A. ESSENTIALLY, ALL OF THEM.
Q. OCCASIONALLY, A HUSBAND MAY COME OR THE FATHER OF A CHILD MAY COME?
A. CORRECT.
Q. BUT THE PEOPLE THAT YOU'RE TREATING AND DEALING

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WITH FOR THE 20 YEARS HAVE BEEN WOMEN?
A. CORRECT.
Q. IN YOUR EXPERIENCE, HAVE THE WOMEN THAT YOU'VE BEEN DEALING WITH WHO SMOKE CIGARETTES HAD ANY TENDENCY TO USE CIGARETTES AS A WEIGHT CONTROL MEASURE?
A. I THINK THAT'S BEEN GENERALLY TRUE THROUGHOUT THE YEARS.
Q. NOW, WHEN LESLIE FIRST GOT PREGNANT -- TROY HAS JUST TURNED 11. SO WE GO BACK A LITTLE FURTHER THAN 11 YEARS -- WHAT DID YOU AS A DOCTOR BELIEVE WITH RESPECT TO SMOKING AND THE EFFECT ON BIRTH WEIGHT?
A. I THINK, AT THAT POINT IN TIME, IT WAS FELT THAT WOMEN WHO SMOKED MORE THAN ABOUT 10 CIGARETTES A DAY, THAT THE AVERAGE SIZE OF THE BABIES WOULD BE ABOUT A POUND SMALLER THAN WOMEN WHO DIDN'T SMOKE.
Q. WAS THERE, IN YOUR MIND AT THAT TIME, QUESTIONS ABOUT THE EFFECTS OF THAT POUND LOSS ON THE HEALTH OF THE BABY?
A. I DON'T THINK THERE WAS THOUGHT TO BE ANY SIGNIFICANT ADVERSE EFFECTS ON THE INFANT.
Q. BACK 11 YEARS AGO -- YOU'VE BEEN PRACTICING IN VENTURA COUNSEL THIS ENTIRE TIME; CORRECT?
A. CORRECT.
Q. AND YOU WERE PRACTICING FOR 10 YEARS BEFORE THAT?

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A. THAT'S CORRECT.
Q. WAS IT DIFFERENT THAN NOW WITH RESPECT TO THE NUMBERS OF PEOPLE THAT WERE SMOKING CIGARETTES?
A. OH, I THINK A MUCH HIGHER PERCENTAGE OF WOMEN

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SMOKED BACK THEN.
Q. AND WOULD THAT BE TRUE AS TO, GENERALLY, PEOPLE THAT YOU WOULD SEE IN VENTURA COUNTY; WAS THERE MORE SMOKING THEN THAN NOW?
A. YES.
Q. WERE THERE PLACES THAT YOU COULD SMOKE THAT YOU CANNOT SMOKE IN NOW?
A. OH, YES, VERY MUCH SO.
Q. WHAT HOSPITALS DO YOU PRACTICE AT?
A. I PRACTICE AT THE COMMUNITY MEMORIAL HOSPITAL IN VENTURA COUNTY MEDICAL CENTER IN VENTURA. AND ALSO AT THE ST. JOHN'S HOSPITAL IN OXNARD AND ST. JOHN'S HOSPITAL IN PLEASANT HILL AND SANTA PAULA HOSPITAL IN SANTA PAULA.
AND 10 YEARS AGO, THEY ALL ALLOWED SMOKING BY PATIENTS. NOW, OF COURSE, THEY DON'T AT ALL.
Q. AND IN FACT, PATIENTS COULD SMOKE RIGHT IN THEIR ROOMS; CORRECT?
A. THAT'S CORRECT.
Q. AND THAT WOULD BE TRUE WITH RESPECT TO PREGNANT WOMEN WHO WERE ABOUT TO GIVE BIRTH?
A. THAT'S CORRECT.
Q. AND AFTER THEY GAVE BIRTH?
A. THAT'S CORRECT.
Q. NOW, WHEN YOU FIRST SEE A WOMAN WHO HAS COME TO YOU IN YOUR PRACTICE, DO YOU ASK ABOUT THEIR SMOKING BEHAVIOR?
A. YES. IT'S PART OF AN INITIAL HEALTH QUESTIONNAIRE WE GAVE THEM THEN. WE USUALLY DO THAT DURING

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THE INITIAL INTERVIEW.
Q. WHEN YOU FIND OUT THAT A WOMAN IS SMOKING AND EITHER WANTS TO GET PREGNANT OR IS PREGNANT, WHAT DO YOU DO WITH RESPECT TO DEALING WITH THAT WOMAN ABOUT SMOKING?
A. WELL, WE TRY TO ENCOURAGE THEM TO STOP. EITHER IF THEY'RE TRYING TO GET PREGNANT OR IF THEY ARE PREGNANT, TRYING TO ENCOURAGE THEM TO STOP.
BUT IT'S A VERY DIFFICULT PROCESS, BECAUSE IT'S VERY ADDICTIVE. AND SO WE TRY AND WORK WITH THEM AND SEE IF WE GET THEM DOWN TO LESS THAN 10 CIGARETTES A DAY. SOMETIMES YOU CAN, SOMETIMES YOU CAN'T.
Q. AND IN YOUR PRACTICE 10, 11 YEARS AGO, HOW HARD DID YOU TRY TO GET WOMEN TO QUIT SMOKING WHO WERE PREGNANT?
A. WELL, WE WOULD ENCOURAGE THEM, AND THEN ASK THEM ABOUT IT.
BUT WE DIDN'T HAVE A LOT OF SMOKING CESSATION AIDS AT THAT TIME, SO THERE WASN'T -- THERE WASN'T A LOT YOU COULD DO. WE REALIZED HOW ADDICTIVE IT WAS.
WE WOULD JUST DO THE BEST WE COULD TO ENCOURAGE THEM, TYPICALLY THE WEEK BEFORE THEY DELIVERED, TO TRY AND GET THEM TO STOP OR AT LEAST CUT WAY BACK.
Q. WHY DIDN'T YOU PUSH HARDER TO GET THE WOMEN TO STOP SMOKING?
A. IN MY EXPERIENCE, IF YOU PUSH TOO HARD ABOUT SMOKING CESSATION OR EVEN WEIGHT GAIN, THEY'LL GO TO SOMEBODY THAT WON'T MENTION IT TO THEM AT ALL. AND THEN THAT'S NOT NECESSARILY THE BEST FOR THE PATIENT, OR THEY ARE AFRAID TO COME IN FOR THEIR PRENATAL VISITS. THEY ARE

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AFRAID TO BE CONFRONTED ABOUT IT.
YOU HAVE TO DO IT IN A KIND OF GENTLE FASHION, THAT THERE ARE OTHER THINGS MORE IMPORTANT, THAT YOU ARE TRYING TO WORK WITH THEM ON THE PREGNANCY TOO.
Q. I TAKE IT YOU HAVE PAMPHLETS IN YOUR OFFICE THAT YOU GIVE OUT TO WOMEN THAT ARE GOING TO HAVE BABIES?
A. EVERY PATIENT THAT COMES IN ON THEIR FIRST VISIT, PRENATAL VISIT GETS A GROUP OF PAMPHLETS THAT TALK ABOUT NUTRITION, GENERAL HEALTH, WHAT THEY CAN EXPECT DURING THE PREGNANCY. AND THERE'S USUALLY SOME SMOKING CESSATION INFORMATION IN THERE.
Q. IT'S A WHOLE STACK OF INFORMATION; EVERYTHING YOU WANTED TO KNOW ABOUT PREGNANCY?
A. CORRECT.
Q. HAVE YOU, IN YOUR EXPERIENCE, MADE A DETERMINATION AS TO WHETHER OR NOT MOST OF YOUR PATIENTS READ THE PAMPHLETS THAT THEY'RE GIVEN?
A. I WOULD SAY A MAJORITY DO NOT.
Q. NOW, YOU'VE KNOWN LESLIE FOR MORE THAN 10 YEARS, AND I TAKE IT, DURING THE COURSE OF HER PREGNANCIES, YOU WOULD SEE HER FOR LONG PERIODS OF TIME?
A. CORRECT.
Q. OR OVER A LONG PERIOD OF TIME, I SHOULD SAY?
A. CORRECT.
Q. IS THERE, YOU KNOW, SOME GENERAL RULE THAT YOU OPERATE WITH AS TO THE NUMBER OF PRENATAL VISITS, THINGS LIKE THAT?
A. THERE'S A RECOMMENDED PATTERN FOR AN

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UNCOMPLICATED PREGNANCY AS TO HOW OFTEN YOU WOULD SEE THE PATIENT. USUALLY YOU WOULD SEE THEM EVERY MONTH FOR THE 28 WEEKS, EVERY TWO WEEKS FOR 36 WEEKS WEEKLY, UNTIL THEY DELIVER.
IF THEY ARE COMPLICATED, YOU SEE THEM AS OFTEN AS YOU NEED TO.
Q. AND HAVE YOU HAD A CHANCE OVER THE COURSE OF APPROXIMATELY 11 OR 12 YEARS TO EVALUATE LESLIE AS A PATIENT, A PERSON AND A MOTHER?
A. LESLIE WAS A VERY -- SHE WAS A GOOD PATIENT. SHE KEPT ALL OF HER APPOINTMENTS. WE NEVER HAD ANY CONFLICTS. I THINK SHE ALWAYS TRIED TO DO THE RIGHT THING. I THINK THE SMOKING ADDICTION WAS A BIG PROBLEM FOR HER.
AND SHE WAS A VERY CARING MOTHER. SHE WOULD BRING HER CHILDREN WITH HER TO THE PRENATAL VISITS. I ALWAYS PAY ATTENTION TO HOW WOMEN RELATE TO THEIR CHILDREN. SHE HAS A VERY GOOD RELATIONSHIP WITH HER CHILDREN.
Q. AND SHE DID GIVE YOU A SMOKING HISTORY WHEN SHE FIRST CAME TO SEE YOU?
A. YES.
Q. AND SHE GAVE YOU A SMOKING HISTORY OF HAVING BEEN SMOKING SINCE SHE WAS A TEENAGER?
A. I'M NOT SURE THAT I QUESTIONED HER ABOUT WHEN SHE FIRST STARTED.
Q. OKAY. DID SHE GIVE YOU A HISTORY THAT SHE HAD AN OCCASIONAL BEER, AT LEAST ON HER FIRST -- WHEN SHE FIRST CAME TO SEE YOU?
A. I DON'T HAVE ANYTHING RECORDED ON THAT.

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IN QUESTIONING, IF WE THOUGHT IT WAS A PROBLEM, WE WOULD HAVE MADE A NOTE OF IT. BUT IF WE DIDN'T THINK IT WAS A PROBLEM, WE WOULDN'T NECESSARILY HAVE NOTED THAT.
Q. DID YOU HAVE ANY EVALUATION OF LESLIE THAT SHE WAS IN ANY WAY SELF-DESTRUCTIVE?

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A. ABSOLUTELY NOT.
Q. THAT SHE WAS A DRUG ADDICT?
A. NO.
Q. THAT SHE WAS AN ALCOHOLIC?
A. NO.
Q. IN FACT, OVER THE COURSE OF TIME, DID YOU AT SOME POINT IN THE TIME THAT YOU SAW HER DETERMINE OR START A PRACTICE OF DOING DRUG TESTING ON YOUR PATIENTS?
A. THERE WAS ABOUT A TWO-YEAR PERIOD OF TIME WHEN I WAS DOING RANDOM SCREENING DRUG TESTS ON PREGNANT PATIENTS.
AND THEN I ABANDONED THAT, BECAUSE WE JUST WEREN'T GETTING THAT MANY POSITIVE RESULTS. AND USUALLY, THE ONES THAT WE WOULD GET POSITIVE RESULTS ON, WE KNEW AHEAD OF TIME WE'D GET IT ANYWAY BY THEIR HISTORY AND BEHAVIOR.
Q. DID LESLIE -- WAS SHE ONE OF THE PEOPLE WHO GOT TESTED?
A. RIGHT. THE ONE RANDOM THAT I DID DURING THAT PERIOD OF TIME ON LESLIE WAS NEGATIVE.
Q. AND THERE WAS NOTHING IN HER CHARACTER OR HER BEHAVIOR THAT LED YOU TO BELIEVE THAT SHE IN ANY WAY, DURING THE TIME THAT YOU WERE DEALING WITH HER FROM APPROXIMATELY 12 YEARS AGO TO HER LAST CHILD, WAS USING DRUGS?

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A. I HAD NO SUSPICION AT ALL THAT SHE WAS USING DRUGS. USUALLY, YOU'D SEE A PATTERN OF BEHAVIOR THAT MIGHT TIP YOU OFF; FAILED APPOINTMENTS, EXCUSES AS TO WHY THINGS DIDN'T GET DONE, CALLS FOR LOST PRESCRIPTIONS.
AND I SAW NONE OF THAT WITH LESLIE.
Q. AND DO YOU ALWAYS PUT DRUG INFORMATION ABOUT PAST DRUG USE IN SOMEONE'S CHART?
A. NO. PHYSICIANS HAVE A PROBLEM IN TODAY'S WORLD THAT IF CERTAIN THINGS ARE MENTIONED IN THE CHART, PEOPLE CAN BECOME INELIGIBLE FOR HEALTH INSURANCE AND LIFE INSURANCE.
SO YOU HAVE TO BE VERY CAREFUL ABOUT WORDS SUCH AS "DRUG ABUSE, DEPRESSION, ANXIETY" BECAUSE YOU DON'T WANT TO MAKE YOUR PATIENT UNINSURABLE.
SO IF IT'S NOT CURRENTLY A PROBLEM OR WAS NOT A MAJOR PROBLEM IN THE PAST, IT WOULDN'T NECESSARILY BE MENTIONED IN THE CHART.
Q. NOW, YOU'VE BEEN IN PRACTICE FOR OVER 20 YEARS, DEALING WITH WOMEN, AND WOMEN IN TIME PERIODS WHEN THEY'RE TRYING TO START FAMILIES; CORRECT?
A. THAT'S CORRECT.
Q. AND GENERALLY, WOMEN WHO ARE TRYING TO START A FAMILY ARE HIGHLY MOTIVATED?
A. YES, THEY ARE.
Q. AND HIGHLY MOTIVATED TO BE HEALTHY THEMSELVES?
A. CORRECT.
Q. AND HIGHLY MOTIVATED FOR THE CHILDREN TO BE HEALTHY?

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A. YES.
Q. AND YOU BELIEVE LESLIE WAS ALL OF THAT?
A. THAT'S CORRECT.
Q. IN YOUR EXPERIENCE AND BASED ON -- I ASSUME THAT AS A DOCTOR, YOU TRY TO KEEP YOURSELF CURRENT WITH MEDICAL LITERATURE AND SCIENTIFIC LITERATURE?
A. YES, I DO.
Q. AND THAT WOULD BE SCIENTIFIC LITERATURE IN YOUR FIELD?
A. CORRECT.

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Q. AND SORT OF GENERALIZED MEDICINE?
A. AND I TAKE A COUPLE OF JOURNALS THAT TALK ABOUT OTHER SPECIALTIES AND OTHER FIELDS, JUST SO I CAN STAY CURRENT ON IMPORTANT THINGS THAT COME OUT.
Q. AND IS THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION ONE OF THOSE JOURNALS?
A. THAT'S CORRECT.
Q. IN YOUR EXPERIENCE OF MORE THAN 20 YEARS OF PRACTICE, AND BASED ON THE MEDICAL AND SCIENTIFIC LITERATURE, IS THERE EVIDENCE THAT PREGNANT WOMEN HAVE A HARDER TIME QUITTING SMOKING THAN WOMEN IN GENERAL?
A. YES. THERE WAS JUST AN ARTICLE IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION IN THE LAST TWO OR THREE ISSUES, WITHIN THE LAST COUPLE OF WEEKS, THAT SHOWS STATISTICALLY THAT PREGNANT WOMEN HAVE A MUCH HARDER TIME QUITTING SMOKING THAN WOMEN IN GENERAL, AND ALSO HAVE A HIGHER RELAPSE RATE AFTER THE PREGNANCY THAN WOMEN IN GENERAL.

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Q. SO EVEN THOSE THAT QUIT DURING THE TIME OF PREGNANCY, THERE'S A GREATER RELAPSE RATE GOING BACK TO SMOKING IN THEM THAN IN WOMEN IN GENERAL?
A. THAT'S CORRECT.
Q. BASED ON YOUR EXPERIENCE AND PRACTICE, IN YOUR OPINION, WHAT WOULD ACCOUNT FOR THAT?
A. I'M NOT SURE IT'S ENTIRELY KNOWN FOR SURE.
BUT A LOT OF CHANGES GO ON IN WOMEN THAT BECOME PREGNANT. STARTING VERY EARLY IN THE PREGNANCY, THEY HAVE DIFFERENT TASTES OF FOOD CHANGE, SMELLS CHANGE, THEIR METABOLIC RATE CHANGES. THEY GO THROUGH HORMONAL CHANGES.
A LOT OF THEM GO THROUGH PERIODS, PARTICULARLY IN THE FIRST TRIMESTER, AND THEN AGAIN IN THE LAST TRIMESTER WHERE THEY HAVE A LOT OF EMOTIONAL CHANGES.
AND I THINK FOR A LOT OF THOSE WOMEN, THE NICOTINE ADDICTION HELPS TO QUIET DOWN SOME OF THOSE THINGS.
AND THEN AFTER THEY DELIVER, I THINK THEY RELAPSE, BECAUSE THEY HAVE SLEEP DEPRIVATION AND STRESS. AND AGAIN, THAT NICOTINE ADDICTION HELPS TO QUIET THOSE THINGS DOWN.
A LOT OF PEOPLE, WHEN THEY'RE STRESSED, GO RIGHT TO THE CIGARETTE. THAT'S THE FIRST THING THEY DO. I THINK THAT'S PROBABLY THE MECHANISM IN THE PREGNANT WOMEN.
Q. POSTPREGANCY, DOES THERE TEND TO BE A POST-GIVING-BIRTH DEPRESSION IN WOMEN?
A. IT'S VERY COMMON.
Q. AND HAS THAT DEPRESSION BEEN ASSOCIATED WITH INCREASED SMOKING RATES?

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A. YES.
Q. AND, DOCTOR, WITH RESPECT TO LESLIE WHITELEY, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT SHE WAS AN ADDICTED SMOKER?
MS. MASON: OBJECTION, YOUR HONOR. BEYOND THE SCOPE. FOUNDATION.
THE COURT: ON BEYOND THE SCOPE, IF THAT'S AN OBJECTION, I'M GOING TO HAVE TO TALK TO YOU ABOUT IT, BECAUSE I DON'T HAVE THE INFORMATION NECESSARY TO RULE.
SO IF YOU WANT TO HAVE A SIDEBAR, WE CAN.
MS. CHABER: OKAY. IT'S MY LAST QUESTION, TOO.
THE COURT: THE OBJECTION APPARENTLY HAS NOT BEEN WITHDRAWN ON THAT PROMISE.
(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

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THE COURT: WE ARE BACK ON THE RECORD.
AND WHERE DO WE STAND WITH THAT LAST QUESTION.
MS. CHABER: I'LL WITHDRAW THAT QUESTION.
UNFORTUNATELY, THAT DOESN'T PUT IT AT A ZERO. THAT PUTS IT AT A FEW MORE QUESTIONS.
Q. DR. RICHARDSON, IS LESLIE WHITELEY, WHO YOU'VE SEEN OVER APPROXIMATELY A 10-YEAR TIME PERIOD, SOMEONE THAT YOU ADVISED TO QUIT SMOKING?
A. YES.
Q. AND LESLIE DID NOT FOLLOW YOUR ADVICE?
A. THAT'S CORRECT.
Q. SHE DID NOT QUIT SMOKING?
A. AS FAR AS I KNOW, THAT'S CORRECT.

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Q. AND EARLIER, YOU HAD SAID THAT SHE WAS A VERY COMPLIANT PATIENT?
A. CORRECT.
Q. AND SHE FOLLOWED ALL THE OTHER ADVICE THAT YOU GAVE HER?
A. THAT'S CORRECT.
Q. SHE DID ALL THE THINGS THAT SHE WAS SUPPOSED TO?
A. YES.
Q. EXCEPT QUIT SMOKING?
A. THAT'S CORRECT.
Q. AT THE TIME THAT YOU -- OVER THESE YEARS THAT YOU HAVE BEEN TREATING LESLIE WHITELEY, DO YOU AND DID YOU HAVE AN OPINION DURING THE TIME PERIOD THAT YOU WERE HER DOCTOR AND SHE WAS UNDER YOUR CARE AND TREATMENT AS TO WHY LESLIE DID NOT COMPLY WITH YOUR ADVICE TO QUIT SMOKING?
A. WELL, I THINK LESLIE FITS THE PATTERN OF A LOT OF PATIENTS. AND HAVING DEALT WITH THOUSANDS OF PATIENTS OVER THE LAST 20-PLUS YEARS, I'D HAVE TO SAY THAT I THINK SMOKING IS PROBABLY ONE OF THE MOST ADDICTIVE PROBLEMS THAT WE HAVE. MAYBE ONLY CRACK COCAINE IS WORSE. IT'S EXTREMELY ADDICTIVE.
I'VE WORKED WITH MANY, MANY PATIENTS TO TRY AND GET THEM TO QUIT SMOKING, AND I CAN ATTEST AND THEY CAN ATTEST TO ME HOW DIFFICULT IT IS.
MS. CHABER: I HAVE NOTHING FURTHER.
THE COURT: OKAY. WHO IS NEXT?
MS. MASON: I AM, YOUR HONOR.
THE COURT: OKAY. MS. MASON.

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CROSS-EXAMINATION

BY MS. MASON: Q. GOOD MORNING, DR. RICHARDSON.
A. GOOD MORNING.
Q. MY NAME IS LUCY MASON. IT'S NICE TO MEET YOU, SIR.
A. IT'S NICE TO MEET YOU.
Q. SIR, I HAVE JUST A FEW QUESTIONS FOR YOU TODAY.
YOU WERE DISCUSSING WITH MS. CHABER EARLIER THE IMPORTANCE OF KEEPING YOUR WEIGHT DOWN, WEIGHT CONTROL, SO THAT YOUR PATIENTS WHO ARE DELIVERING CHILDREN DON'T HAVE TO HAVE C-SECTIONS.
SIR, YOU CERTAINLY DON'T ADVISE YOUR PATIENTS TO SMOKE TO KEEP THEIR WEIGHT DOWN, DO YOU?
A. THAT'S CORRECT.
Q. AND SIR, YOU MAKE IT CLEAR TO YOUR PATIENTS, DON'T YOU, DOCTOR, THAT A LOW BIRTH WEIGHT BABY IS NOT A DESIRABLE MEDICAL OUTCOME?
A. YOU HAVE TO BE CAREFUL HOW YOU DEFINE "LOW BIRTH

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WEIGHT." THERE ARE TWO DIFFERENT TERMS YOU USED.
REDUCING THE WEIGHT OF THE INFANT BY A POUND, FROM SAY EIGHT POUNDS TO SEVEN POUNDS, PROBABLY HAS NO SIGNIFICANT IMPACT.
IN MEDICINE, WE USE A TERM CALLED "LOW BIRTH WEIGHT," WHERE IT'S TWO STANDARD DEVIATIONS APART FROM THE AVERAGE WEIGHT AT THAT GESTATION, THAT AGE, WHICH IS A SIGNIFICANT DIFFERENCE.

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SO IN THAT CASE, A LOW BIRTH WEIGHT WOULD BE LIKE A THREE OR FOUR-POUND BABY AT TERM.
NOT EVEN A FIVE OR A FIVE AND A HALF POUND BABY WOULD BE CONSIDERED A LOW BIRTH WEIGHT.
Q. DOCTOR, IT'S NOT A GOOD MEDICAL OUTCOME FOR ONE OF YOUR PATIENTS TO GIVE WEIGHT TO A LOW BIRTH WEIGHT BABY, IS IT, AS YOU HAVE DEFINED IT?
A. THAT'S CORRECT.
Q. ALL RIGHT, SIR.
IF YOU WERE GOING TO RECOMMEND TO A PATIENT THAT THEY OUGHT TO KEEP THEIR WEIGHT DOWN DURING PREGNANCY, YOU ADVISE THEM TO WATCH THEIR DIET; IS THAT CORRECT?
A. YES.
Q. AND EXERCISE TO THE EXTENT OF THEIR --
(REPORTER INTERRUPTION)
THE COURT: WHY DON'T YOU START THE QUESTION OVER. YOU ARE GOING TOO FAST.
MS. MASON: THANK YOU, YOUR HONOR.
Q. YOU WOULD ADVISE YOUR PATIENTS, DOCTOR, IN ORDER TO KEEP THEIR WEIGHT DOWN TO MONITOR THEIR DIET; RIGHT?
A. THAT'S CORRECT.
Q. AND YOU WOULD ALSO ADVISE THEM, DEPENDING ON THEIR PREPREGNANCY FITNESS LEVEL, TO EXERCISE IN ORDER TO KEEP THEIR WEIGHT DOWN; ISN'T THAT RIGHT, SIR?
A. THAT'S CORRECT.
Q. ALL RIGHT. DOCTOR, YOU'VE SEEN THE SURGEON GENERAL'S WARNING. IT SAYS: "SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH AND LOW BIRTH

3090

WEIGHT"; ISN'T THAT RIGHT, SIR? YOU HAVE SEEN THAT WARNING BEFORE?
A. I HAVEN'T SEEN THAT PARTICULAR WARNING, NO.
Q. DO YOU KNOW, SIR, WHETHER THAT WARNING WENT ON THE CIGARETTE PACKS THREE YEARS BEFORE MRS. WHITELEY EVER CAME TO SEE YOU AS A DOCTOR?
A. I DON'T SMOKE. SO I'M SORRY. I HAVEN'T PAID ATTENTION TO THOSE WARNINGS. I JUST KNEW THEY WERE ON THE PACKAGE.
Q. YOU DON'T KNOW, SIR, WHAT YEARS THEY WERE PLACED ON THE CIGARETTE PACKAGES?
A. NO, I DON'T.
Q. DOCTOR, I BELIEVE YOU TOLD MS. CHABER THAT YOU SUGGESTED TO MRS. WHITELEY THAT SHE SHOULD QUIT SMOKING ON NUMEROUS OCCASIONS; ISN'T THAT RIGHT?
A. WELL, CERTAINLY, AT THE START OF EACH PREGNANCY, WE WOULD. AND THEN, IF THERE WAS A SUSPICION DURING THE PREGNANCY THAT THE PATIENT WAS STILL SMOKING, WE'D ASK THEM ABOUT IT, AND AGAIN MAKE THE SAME RECOMMENDATION.
Q. IN FACT, DOCTOR, ISN'T IT YOUR ROUTINE THAT IF YOU DISCOVER THAT A PATIENT IS STILL SMOKING, THAT YOU'LL OFFER TO WORK WITH THEM TO HELP THEM QUIT SMOKING? ISN'T THAT RIGHT?
A. YES.
Q. SIR, THAT'S BEEN YOUR ROUTINE PRACTICE EVER SINCE

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MRS. WHITELEY CAME TO SEE YOU FOR THE FIRST TIME AT A PRENATAL VISIT IN 1988; IS THAT RIGHT?

A. THAT'S CORRECT.

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Q. MRS. WHITELEY NEVER ASKED YOU FOR ASSISTANCE IN QUITTING SMOKING, DID SHE, SIR?

A. I DON'T RECALL.

Q. AND SIR, YOU TRY TO COMMUNICATE WITH YOUR PATIENTS IN A WAY THAT THEY UNDERSTAND YOUR MEDICAL ADVICE; ISN'T THAT RIGHT?

A. THAT'S CORRECT.

Q. AND SIR, YOU HAD A PRETTY GOOD RAPPORT WITH MRS. WHITELEY, DIDN'T YOU, SIR?

A. YES, I DID.

Q. IN FACT, SIR, DON'T YOU BELIEVE THAT YOU WERE ABLE TO COMMUNICATE YOUR BELIEF TO HER THAT SHE SHOULDN'T SMOKE DURING PREGNANCY?

A. I THINK THAT WHEN YOU'RE WORKING WITH A PATIENT AS A PHYSICIAN AND YOU MAKE RECOMMENDATIONS TO THEM, HOW THOSE RECOMMENDATIONS ARE PERCEIVED OFTEN WILL DEPEND ON THE PATIENT AND WHAT SITUATION THEY'RE IN.

WHEN YOU'RE TALKING ABOUT ADDICTIVE PROBLEMS OR EVEN WEIGHT PROBLEMS OR EVEN PREGNANCY, PATIENTS TEND TO BE IN A STATE OF SELF-DENIAL.

A LOT OF PREGNANT WOMEN HAVE THE PHILOSOPHY THAT PREGNANCY IS A NORMAL THING; IT'S A NORMAL PHYSIOLOGIC STATE. THEY DON'T BELIEVE THAT THEY NEED TO DO ANYTHING EXTRA TO TRY AND ENSURE A GOOD OUTCOME. "MOTHER DID IT. GRANDMOTHER DID IT. WE DON'T WORRY ABOUT THOSE THINGS."

AND THAT MAKES IT VERY DIFFICULT.

MS. MASON: OBJECTION, YOUR HONOR. MOVE TO STRIKE AS NONRESPONSIVE.

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THE COURT: WELL, IN THE DOCTOR'S ANSWER, HE DIDN'T SAY ANYTHING AT ALL ABOUT THE PLAINTIFF LESLIE WHITELEY.

SO I AM GOING TO STRIKE IT, BECAUSE THE ANSWER WASN'T TIED TO THE QUESTION, WHICH RELATED SPECIFICALLY TO MRS. WHITELEY.

MS. MASON: THANK YOU, YOUR HONOR.

Q. DOCTOR, MY QUESTION WAS ABOUT MRS. WHITELEY.

ISN'T IT YOUR BELIEF, SIR, THAT WHEN YOU WERE TREATING MRS. WHITELEY FOR HER PREGNANCY, IT'S YOUR BELIEF THAT YOU WERE ABLE TO COMMUNICATE ADEQUATELY TO HER YOUR OPINION THAT SHE SHOULD NOT SMOKE WHILE SHE WAS PREGNANT?

A. YES.

Q. OKAY. THANK YOU, DOCTOR.

DOCTOR, YOU MENTIONED THAT YOU HAND OUT -- IN ADDITION TO TELLING YOUR PATIENTS NOT TO SMOKE, YOU GIVE THEM PAMPHLETS AND MATERIALS ON THEIR PREGNANCY; ISN'T THAT RIGHT?

A. THAT'S CORRECT.

Q. AND WHEN YOU GIVE THESE PAMPHLETS TO YOUR PATIENTS, YOU ADVISE THEM THAT IT'S A VERY GOOD IDEA THAT THEY READ THE MATERIAL CONTAINED IN THOSE PAMPHLETS; ISN'T THAT TRUE?

A. THAT'S CORRECT.

Q. AND THAT'S BEEN YOUR ROUTINE PRACTICE; ISN'T THAT TRUE, DOCTOR?

A. THAT'S CORRECT.

Q. AND THAT WAS YOUR ROUTINE PRACTICE WHEN

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MRS. WHITELEY CAME TO SEE YOU IN 1988; ISN'T THAT RIGHT?

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A. YES.
Q. ALL RIGHT. DOCTOR, DO YOU REMEMBER HANDING OUT PAMPHLETS FROM THE AMERICAN COLLEGE OF OBSTETRICS AND GYNECOLOGY?
A. YES, OVER THE YEARS, THERE'S BEEN PERIODIC TIMES WHEN WE'LL USE CERTAIN OF THEIR PAMPHLETS.
Q. ONE OF THOSE PAMPHLETS, SIR, WAS CALLED "PLANNING FOR PREGNANCY"; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. AND IT WAS YOUR ROUTINE PRACTICE TO HAND PAMPHLETS OUT WHEN MRS. WHITELEY CAME TO SEE YOU IN 1988; ISN'T THAT TRUE, SIR?
A. I'M NOT SURE WHETHER WE WERE GIVING THEM AT THAT PARTICULAR TIME OR NOT.
OVER THE YEARS, WE HAVE USED EASTMAN, WE USED THE AMERICAN COLLEGE PAMPHLET. WE HAVE USED OTHER ONES THAT HAVE BEEN FURNISHED TO US, AND IT WOULD VARY OVER THE YEARS.
MS. MASON: DOCTOR, I'M GOING TO HAND YOU A DOCUMENT ENTITLED "PLANNING FOR PREGNANCY" THAT'S BEEN MARKED NEXT IN ORDER.
MR. MARUYAMA, IT'S 4805; IS THAT CORRECT?
THE CLERK: CORRECT.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 4805)

3094

MS. MASON: Q. SIR, DO YOU RECOGNIZE THAT AS ONE OF THE PAMPHLETS THAT YOU USED IN YOUR PRACTICE IN VENTURA COUNTY?
A. WE HAVE GIVEN THAT OUT AT VARIOUS TIMES, YES.
Q. ALL RIGHT. AND AGAIN, SIR, WHEN YOU GIVE THIS PAMPHLET AND OTHER MATERIALS TO YOUR PATIENTS, YOU ADVISE THEM TO READ IT, DON'T YOU, SIR?
A. THAT'S CORRECT.
Q. AND YOU NEVER DISCUSSED WITH MRS. WHITELEY, DID YOU, DOCTOR, WHETHER SHE, IN FACT, READ ANY OF THE MATERIALS THAT YOU GAVE HER?
A. I DID NOT.
Q. ALL RIGHT. AND DOCTOR, YOU MENTIONED SOME DRUG TESTS YOU RAN ON MRS. WHITELEY WHEN SHE CAME TO SEE YOU FOR THE FIRST TIME IN 1988.
DOCTOR, THAT TEST WOULD ONLY TELL YOU WHETHER SHE WAS TAKING DRUGS AT THAT TIME; ISN'T THAT TRUE?
A. THAT'S CORRECT.
Q. THAT TEST CAN DO NOTHING TO REVEAL PAST DRUG USE; ISN'T THAT CORRECT?
A. THAT'S CORRECT.
Q. ALL RIGHT, SIR.
DO YOU HAVE YOUR MEDICAL RECORDS WITH YOU TODAY FOR MRS. WHITELEY?
A. YES, I DO.
Q. AND DOCTOR, NOWHERE IN THERE DO YOU DIAGNOSE MRS. WHITELEY AS ADDICTED OR NICOTINE-DEPENDENT; ISN'T THAT TRUE?
A. I DID NOT MENTION THAT ANYPLACE IN THE CHART.

3095

Q. ALL RIGHT, DOCTOR.
IN FACT, MRS. WHITELEY DIDN'T EVER TELL YOU WHY IT WAS SHE CONTINUED TO SMOKE WHILE SHE WAS PREGNANT, DID SHE, DOCTOR?
A. NOT THAT I RECALL.
Q. SHE NEVER TOLD YOU THAT SHE WAS ADDICTED; ISN'T

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THAT TRUE?
A. I DON'T RECALL. THAT WOULD BE PROBABLY A NORMAL PART OF A CONVERSATION WE WOULD HAVE.
Q. BUT SIR, YOU HAVE NO MEMORY, IN FACT, THAT MRS. WHITELEY EVER TOLD YOU THAT THE REASON SHE DIDN'T QUIT SMOKING DURING HER PREGNANCY WAS BECAUSE SHE WAS ADDICTED; ISN'T THAT TRUE?
A. THAT'S CORRECT.
MS. MASON: ALL RIGHT, SIR. THANK YOU.
I HAVE NO FURTHER QUESTIONS.
THE COURT: OKAY. ANYTHING FURTHER BY ANYBODY FOR DR. RICHARDSON?
MR. FURR: NO QUESTIONS.
MS. CHABER: VERY BRIEFLY.
THE COURT: MS. CHABER.

REDIRECT EXAMINATION
BY MS. CHABER: Q. YOU WERE ASKED QUESTIONS ABOUT LOW BIRTH WEIGHT.
I THINK YOU SAID IT'S CAPABLE OF TWO DIFFERENT MEANINGS?
A. THAT'S CORRECT.

3096
Q. ONE OF THOSE MEANINGS IS A MEANING THAT YOU HAVE A SMALLER BABY AND IT WOULD BE AN EASIER DELIVERY?
A. THAT'S CORRECT. THE TERM "LOW BIRTH WEIGHT" IN OBSTETRICS HAS A RATHER SPECIFIC DEFINITION NOW.
AND SO WE HAVE TO BE CAREFUL THAT WE DON'T CONFUSE A SMALLER BABY WITH A LOW-BIRTH-WEIGHT BABY.
Q. AND DO YOU HAVE AN OPINION AS TO WHETHER OR NOT LESLIE WHITELEY WOULD UNDERSTAND THE DEFINITION OF "LOW BIRTH WEIGHT" AS BEING TWO STANDARDS DEVIATIONS BELOW THE NORMAL SIZE BABY?
MS. MASON: OBJECTION, YOUR HONOR. FOUNDATION.
THE COURT: SUSTAINED.
MS. CHABER: Q. IN THE COURSE OF THE YEARS THAT YOU HAVE TREATED LESLIE WHITELEY AND CARED FOR HER THROUGH HER PREGNANCIES, DID YOU HAVE TO FORM OPINIONS WITH RESPECT TO LEVELS OF INTELLIGENCE AND COMPREHENSION?
MS. MASON: OBJECTION, YOUR HONOR. BEYOND THE SCOPE OF CROSS.
THE COURT: SUSTAINED.
MS. CHABER: YOUR HONOR, THIS GOES DIRECTLY TO HER ABILITY TO UNDERSTAND THE THINGS SHE WAS ASKED ABOUT.
THE COURT: I UNDERSTAND. YOU CAN PROCEED THE WAY YOU ARE. BUT WHEN YOU GET TO THE ULTIMATE QUESTION, IF I'M PREDICTING WHAT IT IS, I'M LIKELY TO SUSTAIN. BUT YOU CAN GO AHEAD AND GO DOWN THAT PATH, IF YOU WANT TO, AND MAKE A RECORD ON IT.
MS. CHABER: Q. AT THE TIME THAT YOU WERE DEALING WITH LESLIE WHITELEY, DID YOU HAVE AN OPINION AS TO

3097
WHETHER SHE WAS UNDERSTANDING THE CONCEPT OF "LOW BIRTH WEIGHT" TO MEAN TWO STANDARD DEVIATIONS BELOW A NORMAL BABY?
MS. MASON: OBJECTION, YOUR HONOR. FOUNDATION.
THE COURT: THERE IS NO FOUNDATION.
SUSTAINED.
MS. CHABER: Q. DOCTOR, DID YOU FORM OPINIONS ABOUT LESLIE WHITELEY AT THE TIME THAT YOU WERE TREATING HER AS TO THE LEVELS OF SOPHISTICATION OF UNDERSTANDING OF LESLIE WHITELEY?
A. I DON'T THINK LESLIE IS A VERY SOPHISTICATED -- I

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THINK --
MS. MASON: OBJECTION, YOUR HONOR.
NONRESPONSIVE.
THE COURT: I WILL STRIKE THE ANSWER.
THE QUESTION WAS: DID YOU?
YOU CAN GO AHEAD AND REPHRASE THE QUESTION. THAT WAS NOT RESPONSIVE TO THE QUESTION. I'M STRIKING THAT ANSWER.
MS. CHABER: OKAY.
Q. WHAT WAS YOUR OPINION OF LESLIE WHITELEY AT THE TIME THAT YOU WERE TREATING HER AND DEALING WITH HER THROUGH THE COURSE OF FOUR DIFFERENT PREGNANCIES AS TO THE LEVEL OF HER SOPHISTICATION?
A. I DON'T THINK LESLIE IS VERY SOPHISTICATED AND VERY KNOWLEDGEABLE ABOUT A LOT OF THINGS.
MS. CHABER: NOTHING FURTHER.
THE COURT: ANYTHING FURTHER FOR THE DOCTOR.

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MS. MASON: YOUR HONOR, JUST A COUPLE.
THE COURT: SURE.

RECROSS-EXAMINATION

BY MS. MASON: Q. DR. RICHARDSON, DO YOU STILL HAVE THAT PAMPHLET IN FRONT OF YOU THAT YOU SAID YOU GAVE TO PATIENTS OF YOURS?
A. YES.
Q. AND DOCTOR, THIS WAS ADVICE THAT YOU GAVE TO YOUR PATIENTS AND ASKED THEM TO READ DURING THE TIME THAT THEY WERE PREGNANT; ISN'T THAT TRUE?
A. WELL, NOT TO ALL PATIENTS.
AS I MENTIONED, WE GAVE IT OUT AT VARIOUS TIMES OVER THE LAST 20 YEARS.
Q. BUT IT'S YOUR ROUTINE PRACTICE TO GIVE THEM PAMPHLETS SUCH AT THESE; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. DOCTOR, IF YOU WILL TURN WITH ME TO PAGE 2 OF THE PAMPHLET. DO YOU SEE A HEADING THERE THAT SAYS: "CIGARETTES, ALCOHOL AND OTHER DRUGS"?
A. CORRECT.
Q. AND DOCTOR, THE ADVICE IN THIS PAMPHLET SAYS THAT BABIES BORN AT LOW BIRTH WEIGHTS HAVE MORE PROBLEMS THAN THOSE BORN AT NORMAL WEIGHTS; ISN'T THAT TRUE, SIR?
A. THAT'S CORRECT. BUT AGAIN, YOU HAVE TO USE A CORRECT DEFINITION OF "LOW BIRTH WEIGHT."
Q. IN FACT, THERE'S A LOT MORE INFORMATION ABOUT THE EFFECTS CIGARETTES HAVE DURING PREGNANCY OTHER THAN JUST LOW

3099

BIRTH WEIGHT, ISN'T THERE, SIR?
A. (EXAMINING)
IT SAYS: "IT IS HARD TO TELL HOW MUCH OF EACH SUBSTANCE IS HARMFUL. EVERY WOMAN AND EVERY FETUS IS DIFFERENT.
"THESE SUBSTANCES DO HAVE THE POTENTIAL TO HARM YOUR HEALTH AND THE HEALTH OF THE BABY.
"MEDICAL EXPERTS CANNOT STATE EXACTLY HOW MUCH OF WHAT KIND OF ALCOHOL MAY HARM THE FETUS.
"SMOKING ALONE HAS ALSO BEEN LINKED WITH LOW BIRTH WEIGHT AND WITH INCREASED PROBLEMS FOR THE MOTHER. EACH PERSON MAY BE AFFECTED DIFFERENTLY.
"IF YOU FIND YOU CANNOT STOP SMOKING OR

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DRINKING, YOU CAN STILL HELP YOUR BABY BY
SMOKING OR DRINKING AS LITTLE AS POSSIBLE."
Q. DOCTOR, SO THE ANSWER TO MY QUESTION IS THERE IS A LOT MORE ADVICE IN THIS PAMPHLET OTHER THAN SMOKING CAN CAUSE LOW BIRTH WEIGHT?
A. I THINK IT IMPLIES THAT THERE COULD BE OTHER THINGS.
MS. MASON: ALL RIGHT. THANK YOU, SIR.
YOUR HONOR, AT THIS TIME, I'D MOVE 4805 INTO EVIDENCE.
THE COURT: ANY OBJECTION?
MS. CHABER: NO OBJECTION.

3100

THE COURT: 4805 IS RECEIVED.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX RECEIVED
IN EVIDENCE AS DEFENDANTS'
EXHIBIT # 4805)
MS. MASON: Q. AND DOCTOR, JUST SO WE ARE CLEAR, IT'S YOUR BELIEF THAT YOU WERE ABLE TO COMMUNICATE WITH MRS. WHITELEY QUITE CLEARLY THAT YOU DID NOT THINK THAT SHE SHOULD SMOKE DURING PREGNANCY; ISN'T THAT RIGHT, DOCTOR?
A. YES.
MS. MASON: THANK YOU, DOCTOR.
THE COURT: OKAY. ANYTHING FURTHER AT THIS TIME FOR DR. RICHARDSON? BY ANYBODY? ANYTHING FURTHER?
MS. CHABER: NO, NOTHING FURTHER.
THE COURT: OKAY. DR. RICHARDSON, IT IS POSSIBLE THAT ONE OR MORE LAWYERS MAY WISH TO HAVE YOU BACK. I DON'T KNOW WHETHER OR NOT THAT WILL HAPPEN, BUT YOU NEED TO REMAIN AVAILABLE TO RETURN, IF ANY OF THE LAWYERS SHOULD ASK YOU TO RETURN.
THE WITNESS: FOR WHAT PERIOD OF TIME?
THE COURT: THEY WILL COMMUNICATE WITH YOU AND BE SURE THAT YOU GET REASONABLE NOTICE.
THE WITNESS: ARE WE TALKING TODAY?
THE COURT: NO. NOT TODAY.
(WITNESS EXCUSED, SUBJECT TO RECALL)
THE COURT: OKAY. WHO IS GOING TO BE OUR NEXT WITNESS?
MS. CHABER: LESLIE WHITELEY.

3101

THE CLERK: PLEASE COME FORWARD.
PLEASE STAND HERE AND RAISE YOUR RIGHT HAND.
TESTIMONY OF
LESLIE WHITELEY,
A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: LESLIE WHITELEY.
THE CLERK: PLEASE SPELL YOUR NAME.
THE WITNESS: L-E-S-L-I-E W-H-I-T-E-L-E-Y.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND. THIS WAY.
DIRECT EXAMINATION
BY MS. CHABER: Q. HELLO, LESLIE.
A. HI.
Q. HOW ARE YOU DOING THIS MORNING?
A. I'M SCARED.
Q. YOU'RE SCARED?
A. YES.
Q. OKAY. YOU JUST KIND OF TALK INTO THE MICROPHONE. I SEE YOU HAVE SOME WATER THERE. AND WE ASSUME

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THEY'RE ALL VERY NICE PEOPLE, SO IT'S NOTHING TO BE SCARED OF.

I TAKE IT YOU'VE NEVER TESTIFIED BEFORE?

A. NO, I HAVEN'T.

Q. OKAY. HOW OLD ARE YOU, LESLIE?

A. FORTY.

Q. AND HOW OLD WERE YOU WHEN YOU WERE DIAGNOSED WITH

3102

LUNG CANCER?

A. 38.

Q. YOU HAVE FOUR CHILDREN?

A. YES.

Q. AND LEONARD IS YOUR HUSBAND?

A. YES.

Q. DID YOU HAVE SOME PREVIOUS MARRIAGES?

A. YES.

Q. DO YOU SORT OF COUNT THOSE MARRIAGES?

A. NO.

Q. WHY NOT?

A. WELL, I WAS YOUNG, AND I JUST DON'T -- MY LIFE STARTED WITH LEONARD.

Q. AND YOU AND LEONARD GOT MARRIED WHEN?

A. IN 1986.

Q. AND YOU HAD KNOWN HIM FOR A COUPLE OF YEARS BEFORE THAT?

A. YES.

Q. LET'S TALK A LITTLE BIT ABOUT YOUR GROWING UP.

WHERE DID YOU GROW UP?

A. IN VENTURA, CALIFORNIA.

Q. OKAY. A RURAL AREA?

A. NO, NOT VENTURA.

Q. OKAY. GIVE US A DESCRIPTION OF WHAT VENTURA IS LIKE.

A. IT'S LIKE "THE WONDER YEARS." WE HAD PRETTY MUCH THE PERFECT NEIGHBORHOOD, YOU KNOW, WITH A NEIGHBORHOOD, ALL THE KIDS AROUND AND THE ELEMENTARY SCHOOL RIGHT THERE IN OUR

3103

BACKYARD. AND IT WAS -- IF YOU'VE EVER SEEN THE PROGRAM "THE WONDERS YEARS," IT'S A LOT LIKE IT.

Q. OKAY. AS YOU WERE GROWING UP, YOU HAD OLDER BROTHERS AND SISTERS?

A. YES.

Q. CAN YOU GIVE US AN IDEA WHAT YOUR FAMILY STRUCTURE IS AND WHERE YOU FIT INTO IT.

A. I'M THE SECOND TO THE YOUNGEST OF SIX KIDS.

Q. AND WHO IS THE OLDEST?

A. MY BROTHER MICHAEL.

Q. AND HOW MUCH OLDER THAN YOU IS MICHAEL?

A. 13 YEARS, I THINK.

Q. OKAY. AND WHO IS NEXT DOWN FROM MICHAEL?

A. THEN CHRIS.

Q. THAT'S CHRISTINE?

A. YES.

Q. A WOMAN.

AND HOW OLD IS -- HOW MUCH OLDER THAN YOU IS CHRIS?

A. SIX YEARS, I BELIEVE, SEVEN YEARS.

Q. OKAY.

A. IT'S HARD TO KEEP TRACK.

Q. OKAY. SO WHEN YOU WERE THREE OR FOUR, CHRIS WOULD BE 12, 11, SOMETHING LIKE THAT?

A. YEAH. SHE USED TO TAKE ME PLACES WITH HER, TO THE BEACH AND STUFF, ALL OF US KIDS.

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Q. AND WHO IS NEXT DOWN FROM CHRIS?
A. BECKY.

Q. AND HOW MUCH OLDER THAN YOU IS BECKY?
A. SHE'S FIVE YEARS.
Q. OKAY. AND SO WHEN BECKY WAS 16, YOU WOULD BE 11?
A. I BELIEVE SO.
Q. THIS IS A MATH TEST HERE.
WAS BECKY SOMEONE THAT YOU SPENT A FAIR AMOUNT OF YOUR TIME WITH AS YOU WERE GROWING UP?
A. WE SHARED A ROOM.
Q. SO WAS BECKY THE PERSON WHO, IN KNOWING ABOUT EACH OTHER, MIGHT BE THE CLOSEST TO YOU?
A. I WOULD SAY THAT'S FAIR, YES.
Q. IS THERE SOMEBODY BETWEEN YOU AND BECKY IN TERMS OF AGE?
A. KENNY. TWO YEARS OLDER.
Q. BUT I TAKE IT YOU DIDN'T SHARE A ROOM WITH KENNY?
A. ONLY WHEN WE WERE VERY YOUNG.
Q. OKAY. AND AS YOU WERE GETTING TO BE A TEENAGER, BECKY ALREADY WAS A TEENAGER?
A. MM-HMM.
THE COURT: IS THAT A YES?
THE WITNESS: I'M SORRY. YES.
THE COURT: THE REASON I INTERRUPTED, THE COURT REPORTER CAN ONLY TAKE DOWN --
THE WITNESS: IT'S HARD TO SPELL "MM-HMM."
THE COURT: IT'S HARD TO SPELL.
MS. CHABER: Q. YOU REMEMBER THAT BECAUSE YOU HAD A DEPOSITION?
A. YES.

Q. OKAY. FOR FOUR OR FIVE DAYS?
A. YES.
Q. WHEN YOU WERE A PRETEEN, BECKY WAS ALREADY A' TEENAGER; CORRECT?
A. YES.
Q. AND DID YOU LOOK UP TO BECKY AND LOOK UP TO THE THINGS THAT BECKY DID?
A. I SUPPOSE SO, YES.
Q. WAS BECKY SMOKING WHEN SHE WAS 16?
A. I'M NOT SURE. I'M NOT SURE WHEN SHE STARTED --
Q. DID SHE --
A. -- SMOKING.
Q. DO YOU RECALL HER SMOKING AS A TEENAGER?
A. NO, I DON'T.
Q. BENEATH YOU IN TERMS OF AGE IS DAVID?
A. YES.
Q. ARE YOU AND DAVID CLOSE?
A. NO.
Q. ARE YOU AND DAVID SORT OF THE OPPOSITE OF CLOSE?
A. I GUESS YOU COULD SAY SO. HE HAS HIS OWN PROBLEMS.
Q. AS YOU WERE GROWING UP, YOU WENT TO AN ELEMENTARY SCHOOL?
A. YES.
Q. DID YOU WALK THERE?
A. YES. IT WAS RIGHT AROUND THE CORNER.
Q. OKAY. AND YOU WENT TO JUNIOR HIGH SCHOOL?
A. YES.

Q. AND DID YOU WALK THERE?
A. WALKED, TOOK THE BUS ALSO, RODE OUR BICYCLES.

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Q. OKAY. AND HIGH SCHOOL; DID YOU GO TO HIGH SCHOOL WHEN YOU STILL LIVED IN VENTURA?
A. NO. I LIVED IN OJAI.
Q. SO AT SOME POINT IN TIME, YOU MOVED FROM VENTURA TO OJAI?
A. YES.
Q. AND YOU CHANGED SCHOOLS?
A. YES.
Q. OKAY. AND THE JUNIOR HIGH YOU WENT TO, THAT WAS CABRILLO?
A. YES.
Q. AND LEONARD WAS AT THAT SCHOOL?
A. YES.
Q. OKAY.
A. HE'S IN THE YEARBOOK.
Q. YOU DIDN'T REALLY KNOW HIM THEN, DID YOU?
A. NO.
Q. OKAY. WHEN YOU MET LATER ON, DID YOU TWO COMPARE NOTES THAT YOU WERE BOTH AT THE SAME SCHOOL PREVIOUSLY?
A. YES. I KNEW HE LIVED ACROSS THE STREET FROM THE SCHOOL, BUT THAT WAS ABOUT ALL.
Q. OKAY. HE WASN'T ONE OF THE PEOPLE THAT YOU HUNG AROUND WITH THEN?
A. NO.
Q. AND YOU MET LEONARD WHEN YOU BOTH WERE STUDYING TO BE TRUCK DRIVERS?

3107

A. YES.
Q. OKAY. AND YOU IN FACT DID BECOME A TRUCK DRIVER FOR A SHORT PERIOD OF TIME?
A. YES.
Q. WHAT KIND OF TRUCKS DID YOU DRIVE?
A. FLATBED. AND I ALSO HAULED MATERIAL.
Q. BUT WHAT KIND OF MATERIAL?
A. SAND. AND A LITTLE BIT OF ASPHALT.
Q. YOU DIDN'T DO ANY REPAIR WORK ON THE TRUCKS?
A. NO.
Q. THAT WASN'T PART OF YOUR JOB?
A. NO.
Q. HOW LONG A TIME PERIOD DID YOU DRIVE TRUCK?
A. OH, OFF AND ON, MAYBE A YEAR.
Q. YOU DID SOME OTHER THINGS WORKWISE AFTER YOU GOT OUT OF SCHOOL?
A. YES. I DID MAID WORK.
Q. NOW, WHEN YOU WOULD GO TO JUNIOR HIGH SCHOOL, DID YOU GO BY -- WALK BY THE ELEMENTARY SCHOOL?
A. YES.
Q. AND WAS THERE A GAS STATION NEAR THE ELEMENTARY SCHOOL?
A. YES, THERE WAS.
Q. WAS THERE A VENDING MACHINE IN THAT GAS STATION NEAR THE ELEMENTARY SCHOOL THAT SOLD CIGARETTES?
A. YES, THERE WAS.
Q. AND DID YOU EVER BUY CIGARETTES FROM THAT VENDING MACHINE?

3108

A. I BELIEVE I DID.
Q. AND WERE THERE OTHER VENDING MACHINES THAT YOU BOUGHT CIGARETTES FROM ON YOUR WAY TO SCHOOL?
A. YES, U.S.A. GAS STATION.
Q. OKAY. AND WHERE WAS THAT LOCATED?
A. ON THOMPSON BOULEVARD IN VENTURA. IT WAS ACROSS THE STREET FROM AN ELEMENTARY SCHOOL. I DON'T REMEMBER THE

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NAME OF IT RIGHT OFFHAND.
Q. WERE THE VENDING MACHINES FREELY ACCESSIBLE TO KIDS?
A. OH, YES.
Q. DID ANYBODY EVER STOP YOU FROM PUTTING YOUR MONEY IN AND GETTING YOUR CIGARETTES OUT OF IT?
A. NO.
Q. WHEN DID YOU START SMOKING?
A. WHEN I WAS 13.
Q. AND WHAT BRAND DID YOU START SMOKING?
A. MARLBORO.
Q. AND WHY DID YOU PICK MARLBORO?
A. THAT'S WHAT ALL THE OTHER KIDS SMOKED.
Q. OKAY. AND WHERE WOULD YOU SMOKE THE CIGARETTES?
A. USUALLY, AROUND THE CORNER, AT THE ELEMENTARY SCHOOL.
Q. WHERE WOULD YOU GET THE MONEY TO BUY THE CIGARETTES?
A. WE USED LUNCH MONEY OR WE WOULD POOL OUR MONEY TOGETHER, YOU KNOW.
Q. A GROUP OF KIDS WOULD PUT THE MONEY TOGETHER AND

3109

BUY A PACK?
A. RIGHT. MM-HMM.
Q. DO YOU REMEMBER YOUR FIRST CIGARETTE?
A. YES, I DO.
Q. CAN YOU TELL US ABOUT THAT EXPERIENCE.
A. WELL, A GIRLFRIEND OF MINE HAD GOT A CIGARETTE, I THINK FROM HER MOM, AND IT WAS -- I DON'T KNOW HOW YOU'D SAY -- MADE ME CHOKE A LOT.
Q. SO YOU CHOKED ON THAT FIRST CIGARETTE?
A. YES.
Q. WAS THAT THE LAST CIGARETTE YOU SMOKED?
A. NO.
Q. DID THE CIGARETTE MAKE YOU FEEL GOOD?
A. I DON'T THINK SO. NOT THAT I REMEMBER.
I JUST FELT KIND OF PROUD OF MYSELF THAT I DID IT, YOU KNOW.
Q. WHAT DO YOU MEAN "PROUD OF YOURSELF THAT YOU DID IT"?
A. IT WAS LIKE A RITE OF PASSAGE, YOU KNOW. SOMETHING THAT I HAD SEEN OTHER KIDS DO AND I THOUGHT THAT I WOULD TRY IT.
Q. YOU'D SEEN OTHER KIDS SMOKING.
DID YOU SEE GROWN-UPS SMOKING?
A. OH, I GREW UP WITH PEOPLE SMOKING AROUND ME.
Q. CAN YOU GIVE US AN EXAMPLE OF THE KINDS OF PLACES THAT PEOPLE SMOKED WHEN YOU WERE GROWING UP?
A. AT HOME, LIKE MY GRANDPARENTS, THEY SMOKED. THEY WERE ALWAYS SMOKING. MY AUNTS AND UNCLES, THEY SMOKED.

3110

THEY SMOKED IN SOCIAL SETTINGS AND, YOU KNOW, JUST EVERYDAY, EVERYDAY SETTINGS.
Q. WOULD YOU SEE PEOPLE IN STORES SMOKING?
A. THAT I DON'T REMEMBER. I DON'T HAVE A SPECIFIC RECOLLECTION OF THAT.
Q. OKAY. DO YOU REMEMBER THERE BEING PLACES LIKE THERE ARE NOW, BUILDINGS THAT YOU COULDN'T SMOKE IN?
A. JUST SCHOOL. BUT I REMEMBER SEEING THE TEACHERS IN ELEMENTARY SCHOOL COMING OUT OF THEIR LOUNGE AND THE SMOKE BILLOWING OUT WHEN THEY WOULD COME OUT.
Q. AND FROM THAT, DID YOU DRAW THE ASSUMPTION THAT THE TEACHERS WERE SMOKING IN THEIR LOUNGE?

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A. OH, YES.
Q. NOW, YOU WEREN'T ALLOWED TO SMOKE AT SCHOOL, WERE YOU?
A. NO.
Q. AND WHY DID YOU THINK THAT WAS?
A. IT WAS AGAINST THE RULES.
Q. AND WHY WAS IT AGAINST THE RULES?
A. I WAS A KID.
Q. AND WHAT DOES THAT MEAN, YOU WERE A KID?
A. I WASN'T A GROWN-UP. I THOUGHT ONLY GROWN-UPS SMOKED.
Q. WHEN YOU STARTED SMOKING, DID IT MAKE YOU FEEL GROWN UP?
A. I GUESS SO.
Q. THESE HAVE PREVIOUSLY BEEN MARKED AND IN EVIDENCE. LESLIE, THERE'S A PICTURE OF YOU, 1920-A. CAN

3111

YOU HOLD THAT UP TO THE JURY.
WHEN WAS THAT PICTURE FROM?
A. IT WAS 11TH OR 12TH GRADE (INDICATING), '75 OR '76.
Q. AND HOW OLD WERE YOU?
A. I WOULD HAVE BEEN 15 OR 16 YEARS OLD.
Q. OKAY. AND BY THAT POINT IN TIME, HOW MUCH WERE YOU SMOKING?
A. PROBABLY A HALF A PACK, SOMEWHERE AROUND IN THERE.
Q. AND WOULD THAT BE MARLBOROS?
A. YES.
Q. DID SOMETIMES YOU SMOKE ANY OTHER BRANDS?
A. CAMELS.
Q. AND WHEN SAY "CAMELS," WHAT KIND OF CAMELS?
A. THE NO FILTER.
Q. OKAY. AND WAS THAT SOMETHING YOU SMOKED A LOT OF?
A. NO.
Q. AND WHY NOT?
A. THEY WERE PRETTY ROUGH CIGARETTES.
Q. SO WHY DID YOU SMOKE THEM SOMETIMES?
A. WELL, KIDS WOULD NOT BUM THEM OFF OF ME. I DISCOVERED THAT. SO THAT WAS A BENEFIT OF SMOKING THE CAMELS WAS THAT PEOPLE TENDED NOT TO WANT TO BUM THEM.
BUT THEY KIND OF MADE ME FEEL LIKE I WAS KIND OF TOUGH, YOU KNOW, COULD TAKE IT.
Q. WHY DID YOU WANT TO BE TOUGH?

3112

A. OH, I DON'T KNOW. TO BE LIKED BY THE OTHER KIDS, I GUESS.
Q. DID YOU THINK SMOKING CIGARETTES MADE YOU COOL?
A. YES.
Q. WERE THERE A LOT OF KIDS IN YOUR SCHOOL THAT SMOKED?
A. THAT I RECALL, YES. THERE WAS QUITE A FEW.
Q. WOULD YOU EVER SMOKE ON SCHOOL GROUNDS?
A. YES, IN JUNIOR HIGH.
Q. AND WHERE COULD YOU SMOKE?
A. IN THE BATHROOM.
Q. IN THE GIRLS' BATHROOM?
A. YES.
Q. AND DID THE GIRLS' BATHROOM HAVE A PARTICULAR -- WELL, I DON'T WANT MAKE THIS GO THE WRONG WAY, BUT DID IT HAVE THE SMELL OF SMOKE IN THE GIRLS' BATHROOM?
A. OH, YES.

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Q. WERE YOU THE ONLY GIRL THAT SMOKED IN THE GIRLS' BATHROOM?
A. NO. NO, IT WAS THE PLACE TO GO.
Q. DID YOU EVER HAVE ANY TEACHERS WHILE YOU WERE IN JUNIOR HIGH COME UP TO THE GIRLS' BATHROOM WHILE YOU WERE SMOKING?
A. THE DEAN OF GIRLS.
Q. AND WHAT WOULD SHE DO?
A. SHE WOULD EITHER HOLLER OUTSIDE OR POUND ON THE DOOR SOMETIMES. SOMETIMES SHE WOULD SURPRISE US.
BUT MOST OF THE TIME, WE WERE GIVEN FAIR WARNING.

3113

Q. YOU WERE GIVEN WARNING TO BASICALLY PUT YOUR CIGARETTES OUT?
A. YES.
Q. SO DID YOU ASSUME FROM THAT THAT THE DEAN OF GIRLS KNEW THAT THERE WERE GIRLS SMOKING IN THE GIRLS' BATHROOM?
A. OH, YES. I'M SURE THEY COULD SEE SMOKE COMING OUT OF THE VENTS.
MS. CHABER: THIS MIGHT BE A GOOD TIME, YOUR HONOR.
THE COURT: OKAY. JURORS, LET'S RECESS TILL 1:30.
PLEASE CONTINUE TO FOLLOW THE ADMONITION AND WE'LL SEE YOU BACK AT 1:30.
(LUNCH RECESS TAKEN AT 12:00 NOON)

3114

AFTERNOON SESSION 2:10 P.M.
THURSDAY, FEBRUARY 10, 2000
THE COURT: WE ARE BACK ON THE RECORD. BY THE AGREEMENT OF EVERYBODY, WE ARE GOING TO MAKE A MINOR ALTERATION IN THE SCHEDULING OF THE TESTIMONY IN THIS CASE. AS I UNDERSTAND IT, THE PLAINTIFFS HAVE LEFT AS PART OF THEIR CASE IN CHIEF A COUPLE OF DEPOSITIONS AND THEN MS. WHITELEY'S TESTIMONY. THE DEPOSITIONS CAN PROBABLY BE COMPLETED IN A VERY LOGICAL AND EFFICIENT WAY BETWEEN NOW AND THE END OF THIS AFTERNOON.
AND SO IN THE INTEREST OF LOGIC AND EXPEDITION AND EFFICIENCY, WHAT WE'RE GOING TO DO, BY EVERYBODY'S AGREEMENT, IS PLAY THE DEPOSITION TESTIMONY OR SHOW THAT OR READ IT TO YOU THIS AFTERNOON, BECAUSE THAT CAN LOGICALLY, I WOULD HOPE, BE COMPLETED BY THE END OF THE AFTERNOON.
AND MS. WHITELEY WILL RETURN ON MONDAY AND WE'LL TAKE HER TESTIMONY AT THAT TIME. AND THEN WHEN SHE FINISHES GIVING HER TESTIMONY, THE PLAINTIFFS WILL BE RESTING AND THE DEFENSE WILL START THE PRESENTATION OF THEIR EVIDENCE. SO WE'RE GOING TO INTERRUPT MS. WHITELEY RIGHT NOW, WITH THE UNDERSTANDING THAT SHE WILL BE BACK ON MONDAY.
WE ARE GOING TO DO A COUPLE OF DEPOSITIONS, AS I

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UNDERSTAND IT. SO COULD YOU TELL US, MS. CHABER, WHO IS THE FIRST WITNESS?

MS. CHABER: YES. THE FIRST WITNESS IS THE DEPOSITION OF IRWIN TUCKER, T-U-C-K-E-R, TAKEN ON JULY 28TH AND --

THE COURT: OF WHAT YEAR?

3115

MS. CHABER: I'M JUST GOING TO ADD THE SECOND DATE.

THE COURT: OH, "AND."

MS. CHABER: 28TH AND 29TH OF 1997.

THE COURT: AND IS IRWIN I-R-W-I-N?

MS. CHABER: I-R-W-I-N.

THE COURT: OKAY.

MS. CHABER: AND, YOUR HONOR, I HAVE A COPY TO MARK, A MARKED-UP COPY TO MARK FOR IDENTIFICATION AND A COPY FOR THE COURT.

THE CLERK: PLAINTIFFS' EXHIBIT 1923.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1923)

MS. CHABER: WITH A TAB ON THE PAGE THAT IT STARTS ON, SINCE IT DOESN'T START IN THE BEGINNING. HERE IS THE START TAB (INDICATING).

THE COURT: 1923 IS THE TRANSCRIPT. IS THIS A VIDEO?

MS. CHABER: NO, THIS IS NOT. I WOULD ASK, WITH THE COURT'S PERMISSION, IF RAY GOLDSTEIN MAY TAKE THE WITNESS BOX AND READ FOR IRWIN TUCKER?

THE COURT: SURE.

AGAIN, WE HAVE THE SAME STIPULATION, THAT IT WILL BE DEEMED THAT WHAT IS SHOWN ON 1923 IS ABOUT TO BE READ AND THAT THE COURT REPORTER NEED NOT TAKE DOWN THE READING; CORRECT?

3116

MS. CHABER: THAT'S CORRECT.

THE COURT: CORRECT, DEFENSE COUNSEL?

MR. HARDY: YES.

THE COURT: OKAY. THEN WE CAN GO OFF THE RECORD FOR THE READING.

(DEPOSITION TESTIMONY READ)

THE COURT: BACK ON THE RECORD.

MS. CHABER: THAT'S THE CONCLUSION OF THAT DEPOSITION, YOUR HONOR.

THE COURT: THE READING HAS BEEN COMPLETED.

WHAT IS NEXT, MS. CHABER?

MS. CHABER: NEXT, YOUR HONOR, WE'D LIKE TO PLAY A VIDEOTAPE AND READ CERTAIN PORTIONS FROM THE VIDEO DEPOSITION OF SIR RICHARD DOLL, D-O-L-L.

MR. FURR: YOUR HONOR, CAN WE APPROACH FOR JUST A MOMENT?

THE COURT: YES.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: JURORS, THE LAWYERS WANT ME TO GIVE YOU A SHORT RECESS SO THEY CAN GET EVERYTHING SET UP. BUT THEY BELIEVE THAT IF I GIVE YOU A RECESS UNTIL 3:00 O'CLOCK, THAT WE'LL COMPLETE THE VIDEOTAPE AND THE READING BEFORE THE END OF THE DAY TODAY.

LET ME GIVE YOU A 15-MINUTE RECESS SO THEY CAN SET UP. THIS WILL BE OUR AFTERNOON RECESS. PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL JUST TAKE A 15-MINUTE

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RECESS.

WE'LL SEE YOU BACK AT 3:00 O'CLOCK, AND THEN WE'LL GO TO THE 4:30 OR 5:00 O'CLOCK RANGE

(RECESS TAKEN FROM 2:45 TO 3:05 P.M.)

THE COURT: WE ARE ON THE RECORD. YES, MS. CHABER.

MS. CHABER: YES, YOUR HONOR. I'D LIKE TO HAVE MARKED THE TRANSCRIPT FOR THE DEPOSITION OF SIR RICHARD DOLL TAKEN ON JANUARY 17TH, 1997 AND --

THE COURT: THE DEPOSITION WAS TAKEN JANUARY 17TH, 1997 AND?

MS. CHABER: JANUARY 20TH, 1997.

THE COURT: OKAY.

MS. CHABER: AND THAT WILL INCLUDE A PORTION THAT IS NOT ON THE VIDEOTAPE THAT WILL BE READ SUBSEQUENTLY.

THE COURT: ALL RIGHT.

MS. CHABER: SO WE'LL MARK THAT ONE.

THE CLERK: PLAINTIFFS' EXHIBIT 1924.

(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1924)

MS. CHABER: I HAVE ONE FOR THE COURT.

MR. ESCHER: YOUR HONOR.

THE COURT: YES.

MR. ESCHER: WE ARE GOING TO BE READING FROM THE TRANSCRIPTS OF THE 15TH AND 16TH AS WELL. IT PROBABLE MAKES SENSE TO MARK THOSE NOW.

THE COURT: SURE. WHY DON'T WE MARK THEM ALL TOGETHER. EVEN THOUGH THESE ARE PORTIONS YOU'RE OFFERING, SHOULD WE GIVE THEM A PLAINTIFFS' NUMBER, PART OF THE SAME NUMBER, OR DO YOU WANT TO HAVE A SEPARATE NUMBER?

MR. ESCHER: I THINK WE SHOULD MARK THEM AS PART OF THE SAME NUMBER.

MS. CHABER: I DON'T HAVE A PROBLEM WITH THAT, YOUR HONOR.

THE COURT: LET'S MARK ALL THE DESIGNATIONS, NO MATTER WHOSE DESIGNATIONS THEY ARE, AS PART OF 1924, PLAINTIFFS' 1924 FOR IDENTIFICATION. IS THAT ALL RIGHT?

MS. CHABER: THAT'S FINE, YOUR HONOR.

THE COURT: THAT WILL JUST KEEP THEM TOGETHER.

MS. CHABER: WE'LL JUST PUT THEM TOGETHER AS ONE NUMBER.

AND THEN THERE ARE TWO EXHIBITS, YOUR HONOR, THAT ARE REFERENCED IN THE DEPOSITION. REFERENCED BY DEPOSITION NUMBER EXHIBIT NO. 3 IN THE DEPOSITION IS AN ARTICLE ENTITLED "SMOKING AND CARCINOMA OF THE LUNG FROM THE BRITISH MEDICAL JOURNAL. I'D HAVE THAT MARKED AS PLAINTIFFS' NEXT IN ORDER.

THE CLERK: PLAINTIFFS' EXHIBIT 1925

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1925)

MS. CHABER: AND THERE'S COPIES FOR THE COURT THERE.

AND EXHIBIT 4 REFERENCED IN THE DEPOSITION OF DR. DOLL IS AN ARTICLE ENTITLED "LUNG CANCER AND OTHER CAUSES OF DEATH IN RELATION TO SMOKING" FROM THE BRITISH MEDICAL JOURNAL, AND I WOULD HAVE THAT MARKED AS PLAINTIFFS' NEXT IN

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ORDER.
THE CLERK: PLAINTIFFS' EXHIBIT 1926.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFFS'
EXHIBIT # 1926)
MS. CHABER: AND THERE'S A COPY FOR THE COURT.
AND SUBSEQUENT TO THE PLAYING OF THE DEPOSITION,
I WOULD HAVE THE DEPOSITION MARKED. AND MAYBE WE COULD PUT
AN "A" ON IT. IT'S ALREADY CUED UP AND WOULD BE READY TO
GO.
THE COURT: YOU MEAN THE VIDEO?
MS. CHABER: THE VIDEO.
THE COURT: LET ME JUST ASK YOU, OVER THE
WEEKEND YOU'RE GOING TO NEED TO SUPPLY ME WITH MORE BINDERS
AND TABS. WE HAVE RUN OUT.
MS. CHABER: WE COULD PROBABLY DO IT NOW, YOUR
HONOR.
THE COURT: LET'S NOT TAKE THE TIME NOW.
MS. CHABER: OKAY.
THE COURT: OKAY. I THINK WE HAVE THE SAME
UNDERSTANDING, THAT THIS NEED NOT BE REPORTED; CORRECT?
MS. CHABER: YES.
MR. HARDY: YES.
THE COURT: SO WE ARE GOING OFF THE RECORD FOR
3120
THE PLAYING OF THE VIDEO AND THE READING. AND UNLESS
SOMEBODY WANTS TO GO ON THE RECORD BETWEEN THE TWO, I'M NOT
GOING TO HAVE JUDITH GO BACK ON THE RECORD BETWEEN THE TWO.
WE'LL JUST PROCEED WITHOUT BURDENING THE RECORD.
MS. CHABER: THAT'S FINE, YOUR HONOR.
(VIDEOTAPE SHOWN AND DEPOSITION TESTIMONY READ)
THE COURT: THE RECORD SHOULD REFLECT THAT THE
VIDEO HAS BEEN PLAYED AND THE READINGS HAVE BEEN COMPLETED.
AND WHAT IS NEXT, MS. CHABER?
MS. CHABER: WELL, LET'S SEE. IT'S FIVE AFTER
4:00. I COULD READ A DOCUMENT TO THE JURY THAT'S 60-PAGES
LONG, BUT I THINK MAYBE WE'LL END.
THE COURT: ALL RIGHT. IS THAT IT FOR TODAY
THEN?
MS. CHABER: YES, YOUR HONOR.
THE COURT: JURORS --
MS. CHABER: WAIT. TATSUO IS WAIVING THE TAPE.
WE NEED TO MARK THE TAPE.
THE COURT: RIGHT.
THE CLERK: PLAINTIFFS' EXHIBIT 1927.
(ITEM MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFFS'
EXHIBIT # 1927)
THE COURT: THAT'S THE VIDEOTAPE THAT WAS PLAYED
OF SIR RICHARD DOLL?
MS. CHABER: YES.
THE COURT: OKAY. ACTUALLY, LET ME JUST TALK TO
3121
YOU FOR ONE MINUTE ABOUT MONDAY'S SCHEDULE. THEN I'LL TELL
THAT TO THE JURY.
JURORS, YOU ARE GOING TO GET OUT OF HERE EARLY,
IN JUST A MINUTE OR TWO. BUT LET ME TALK TO THE LAWYERS
ABOUT MONDAY'S SCHEDULE.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: JURORS, OBVIOUSLY, IT'S CRITICAL, AS

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YOU KNOW, THAT YOU CONTINUE TO FOLLOW THE ADMONITION OVER THE WEEKEND. SO PLEASE DO SO.

WE ARE GOING TO START ON MONDAY MORNING AT 9:00 O'CLOCK. AND I DON'T HAVE ANOTHER MATTER BEFORE THAT. SO PLEASE, LET'S ALL BE HERE PROMPTLY AT 9:00 O'CLOCK.

NEXT WEEK, WE HAVE A FULL FIVE-DAY WEEK. BUT YOU WILL REMEMBER THAT A WEEK FROM MONDAY, WHICH IS NOT NEXT MONDAY, IS A HOLIDAY. NEXT MONDAY, WE NEED TO BE HERE AT 9:00 O'CLOCK.

SO HAVE A GOOD WEEKEND. AND WE'LL SEE YOU NEXT MONDAY AT 9:00 O'CLOCK.

(THE PROCEEDINGS ADJOURNED AT 4:10 P.M.)

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